this date. By classes the enrollment is: First year, 104; second year, 96; third year, 56.

The following table indicates the enrollment by states:

Alabama	4	Mississippi	5
Arizona	1	Missouri	5
Arkansas	6	Nevada	1
California	4	New Jersey	6
Colorado	1	New York	6
Connecticut	1	North Carolina	6
District of Columbia	4	Ohio	1
Florida	10	Oklahoma	1
Georgia	11	Pennsylvania	2
Idaho	1	South Carolina	6
Indiana	1	Tennessee	3
Kansas	1	Texas	11
Kentucky	9	Virginia	125
Louisiana	1	Washington	1
Maryland	8	Wisconsin	1
Massachusetts	1	West Virginia	12
		Total	256

There have been no material alterations of the curriculum, and no changes in the Faculty.

LIABILITY OF COMMON CARRIERS FOR LATENT DEFECTS IN APPLIANCES DUE TO IMPERFECT MANUFACTURE.—This is a subject that has given the courts considerable difficulty and one on which they are not altogether in harmony. The resulting clash of judicial opinion has left the law upon the subject in a state of some doubt and uncertainty.

While a common carrier impliedly contracts with passengers that he will adopt a reasonably safe and convenient mode of transportation, the liability of the former for injuries arising from the employment of defective and inadequate instrumentalities has its source in a sound and enlightened public policy. As regards the degree of care owed the passenger by the carrier, a review of the numerous cases in which the question has arisen would seem to make the most accurate and adequate statement of it to be that the relation exacts from the carrier the very highest degree of human skill, diligence and foresight that comports with the practical operation and conduct of the business, and is practicable under the circumstances of the particular case.[1] The question now arises, is

[1] Thorson *v.* Groton & S. St. Ry. Co., 85 Conn. 11, 81 Atl. 1024; Sawin *v.* Connecticut Valley St. Ry. Co., 213 Mass. 103, 99 N. E. 952; St. Louis, I. M. & S. Ry. Co. *v.* Platt (Ark.), 157 S. W. 385; Colorado Springs & Interurban Ry. Co. *v.* Allen (Col.), 135 Pac. 790; 2 Hutchinson, Carriers (3rd Ed.), 1002.

this degree of care so exacting as make the carrier liable for latent defects in his vehicles and appliances due to the negligence of the one who constructs them, or does it fall so far short of this as to permit the carrier to discharge his duty to his passengers by purchasing his instrumentalities from reputable manufacturers? Upon this point it is impossible to reconcile the decisions of the courts. The question has been brought before them squarely a number of times, and both affirmative and negative answers have been given.

The courts that take the view that the carrier has fully discharged his duty when he has bought from a reputable manufacturer base their decisions upon the reasoning that the dealers from whom carriers purchase their appliances are not their agents, and that, inasmuch as they cannot be required or expected to manufacture their own appliances, to make them responsible for the negligence of the manufacturer would unduly hamper their business and make them practically insurers of the safety of passengers.[2]

On the other hand, a very great number and by far the majority of the courts have taken an opposite view of the matter, and they fortify their position by arguments both logical and convincing. They contend that, inasmuch as a passenger has the right to demand that the carrier provide for his safety by an examination of his appliances with every test and the taking of every precaution that is reasonable and consistent with the practical operation of the particular kind of transportation, and as the passenger is not privy to the contract between carrier and manufacturer and cannot proceed against the latter for a breach thereof that results in mischief to himself, the plainest principles of justice demand that the carrier be held liable for the dereliction of the manufacturer and be not allowed to shift from his own shoulders a duty imposed upon him by virtue of the business in which he is engaged. The carrier may construct the means of carriage himself or he may delegate this task to others. In the former case his liability for injuries arising from failure to properly test materials and appliances is uncontroverted; should he elect to do the latter, then according to the courts that take this view of the question, the circumstances are such as to warrant the application of the rule of *respondeat superior*.[3]

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[2] Grand Rapids & I. Ry. Co. *v.* Huntley, 38 Mich. 537, 31 Am. Rep. 321; The Nederland, 7 Fed. 926; Irelson *v.* Southern Pac. Ry. Co., 42 La. Ann. 673, 7 So. 800; Roanoke Ry. & El. Co. *v.* Sterrett, 108 Va. 533, 62 S. E. 385. The case of Ingalls *v.* Bills, 50 Mass. 1, 43 Am. Dec. 346, has been cited as an authority both for and against holding the carrier liable. The plaintiff claimed that the degree of care demanded of the carrier amounted to a warranty on his part that his equipment was absolutely perfect, and the court refused to uphold the contention.

[3] Hegeman *v.* Western Ry. Corp., 13 N. Y. 9, 64 Am. Dec. 517; Pennsylvania Co. *v.* Roy, 102 U. S. 451, 26 L. Ed. 141; Treadwell *v.* Whittier, 80 Cal. 574, 22 Pac. 266, 13 Am. St. Rep. 175; Palmer *v.* Delaware & H. Canal Co., 120 N. Y. 170, 24 N. E. 302; Morgan *v.* Chesapeake & O. Ry. Co., 127 Ky. 433, 105 S. W. 961, 15 L. R. A. (N. S.) 790; 2 Hutchinson, Carriers (3rd Ed.), 1016.

In the recent case of *Dibbert* v. *Metropolitan Inv. Co.* (Wis.), 147 N. W. 3, the question under discussion came squarely before the court. After mature consideration of the matter and a thorough review of previous decisions, the court stated that both reason and the weight of authority inclined it to hold the defendant carrier liable for injuries to a passenger resulting from the failure of a manufacturer to make a proper tensile test.

The above decision would seem to be eminently sound, not only because it is supported by the decided weight of authority, but also because it accords with a view to which one is irresistibly driven when the rights of a passenger and the inherent justice of the case are considered in their proper perspective. The carrier engages that he will furnish the passenger with appliances and means of transportation that are as safe and free from defects as a reasonable exercise of human skill and care can make them. If the carrier manufactures them himself, his liability for failure to exercise such skill and care is clear. If he entrusts their construction to another, the duty devolves upon him to see to it that the manufacturer not only has the requisite capacity, but that he will exercise it in every instance. As was aptly said in the Wisconsin case above, a good reputation on the part of a manufacturer is a totally inadequate substitute for a good vehicle. To apply the rule of *respondeat superior* in this connection manifestly places the carrier in no worse position than that in which he would be, were he his own manufacturer. There seems to be no ground nor reason for permitting him to better his position by entrusting the construction of his instruments and vehicles to others. It should be borne in mind, furthermore, that the carrier can always protect himself by stipulating in the contract of purchase that the manufacturer shall indemnify him for any liability incurred because of latent defects arising from negligent construction. The passenger, being a stranger to such contracts, has no opportunity to provide himself with such a remedy.

Many of the courts that have refused to take the view that the carrier is liable for injuries due to latent defects of construction have done so on the ground that to so hold would be to make the carrier an insurer of a passenger's safety.[4] Such a contention is clearly erroneous. All that the rule requires is that, if there be known and practicable tests and methods of inspection for the purpose of revealing latent defects, then the carrier must see to it that the manufacturer employs them. Liability can always be defeated by showing either that there were no such tests, or that they were employed but failed to prove effective. This would not be true, were the carrier an insurer; it merely insures that the manufacturer has not been negligent. It is not contemplated that the carrier shall be responsible in any event, for when the defect is not discoverable by a known and satisfactory test or by careful

[4] Grand Rapids & I. R. Co. *v.* Huntley, *supra;* The Nederland, *supra.*

inspection, then clearly no liability attaches.[5] A careful scrutiny of the cases that are commonly cited as authority for the view that the carrier is not liable will reveal that in many of them either that evidence was adduced to show that adequate tests had been made and that the defect was such as to be incapable of detection, or that the plaintiff's contention was that the degree of care demanded of the carrier amounted to a warranty that his appliances were perfect in all their parts.[6] Such cases are obviously not in point.

LEGACY TO CREDITOR AS ADEMPTION OF DEBT.—By the weight of authority in England and America the general rule is well established that a legacy given by a debtor to his creditor, which is equal to or greater than the debt, is presumed to be intended as satisfaction of the debt, if no notice of the debt and if no intimation of a contrary intention appear on the face of the will.[1] The rule, however, is unpopular with the courts and text-writers alike as being founded upon specious reasoning.[2] Its application has not only been confined to courts of equity,[3] in which it originated,[4] but also a strong disposition has been evinced repeatedly to form exceptions and limitations whenever the nature of the gift or attendant circumstances have supplied a pretext for inferring an intention on the part of the testator contrary to the *prima facie* presumption under the rule.[5]

The rule is merely one of construction, raising a *prima facie* presumption that the intention of the testator was the ademption of the debt by the legacy[6] under the maxim, *"Debitor non præsumitur donare,"*[7] consequently producing the same effect as if the testator's intention had been expressed.[8] The maxim, "A man ought to be just before he is generous," imperfectly assimilated and misapplied, lent superficial support to the general rule, notwithstanding the fact, as Lord Talbot in reluctantly following the precedents

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[5] Ingalls *v.* Bills, *supra;* Readhead *v.* Midland Ry. Co., L. R. 2 Q. B. 412; Jackson *v.* Natchez & W. Ry. Co., 114 La. 981, 38 So. 701, 70 L. R. A. 294.

[6] Ingalls *v.* Bills, *supra;* Meier *v.* Pennsylvania Ry. Co., 64 Pa. St. 225, 3 Am. Rep. 581; Texas & P. Ry. Co. *v.* Buckalew (Tex.), 34 S. W. 165.

[1] Talbot *v.* Duke of Shrewsbury, 2 Lead Cas. Eq. (4th. Am. Ed.) 751; Allen *v.* Merwin, 121 Mass. 378; 2 Pomeroy, Eq., Jur., §§ 527-543; 2 Roper, Legacies, 1025 *et seq.;* 40 Cyc. 1885. See also, Thompson *v.* Wilson, 82 Ill. App. 29; Reynolds *v.* Robinson, 82 N. Y. 103.

[2] Fowler *v.* Fowler, 3 P. Wms. 353; Strong *v.* Williams, 12 Mass. 391; Crouch *v.* Davis, 64 Va. 62, 2 Pom., Eq. Jur. 872.

[3] Cloud *v.* Clinkinbeard, 8 B. Mon. (Ky.) 397, 48 Am. Dec. 397.

[4] Strong *v.* Williams, *supra.*

[5] 2 Roper, Legacies, 1025.

[6] Van Riper *v.* Van Riper, 2 N. J. Eq. 1.

[7] 2 Lomax, Executors, 95.

[8] In re Fletcher, 38 Ch. D. 373, 57 L. J. Ch. 1032.